sidera networks

March 11, 2001

VIA ELECTRONIC FILING

EX PARTE

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of Implementation of Section 224 of the Communications Act, WC Docket No. 07-245; Petition for Rulemaking of Fibertech Networks (RM-11303); Petition for Rulemaking of United States Telecom Association (RM-1293)

Sidera Networks, LLC, NEON Optica, Inc., and Long Island Fiber Exchange, Inc. (collectively "Sidera") hereby submit this *ex parte* letter to supplement the prior submissions of other competitive local exchange carriers ("CLECs") in this proceeding.[1] Sidera is a leading facilities-based provider of broadband services to carrier and enterprise business customers throughout the Northeast Corridor and out to Chicago, Illinois. Sidera's customers include most of the nation's top financial services firms, many public school systems, educational institutions, and municipalities, and virtually all of this country's leading wireless carriers. Sidera offers a full range of advanced broadband services, including Ethernet, Internet Access, and Optical Transport, and customizes its service offerings to meet the ever-evolving broadband needs of its customers.

For a facilities-based provider of broadband services such as Sidera, reliable, timely, and a non-discriminatory access to poles, conduits, and other rights of way, at reasonable, non-discriminatory rates, is essential to further building out fiber optic facilities and infrastructure and expanding and enhancing its broadband network. Reliable access to poles, conduits, and rights of way allows broadband carriers like Sidera to deploy new fiber where their broadband networks previously had no reach and to increase fiber capacity in response to customer demand where their networks already exist. Such broadband network expansion and investment is entirely consistent with, and indeed a goal of, both the National Broadband Plan and Section 706 of the Telecommunications Act.[2] Unfortunately, Sidera has not consistently received reliable, timely, and non-discriminatory access to poles at reasonable, non-discriminatory rates. On numerous recent

[1] On August 26, 2010, RCN Corporation and its subsidiaries ("RCN") entered into an agreement and plan of merger with ABRY Partners, LLC, pursuant to which RCN was restructured into two separate operating units, with RCN's cable assets being separated into one unit and RCN's CLEC assets being consolidated into Sidera Networks, Inc. ("SNI"). Sidera Networks, LLC and NEON Optica, Inc. are wholly-owned subsidiaries of SNI, each with its own FCC Filer Identification Number. Long Island Fiber Exchange, Inc. is a wholly-owned subsidiary of Sidera Networks, Inc., with its own FCC Filer Identification Number.

[2] 47 U.S.C. § 706.

occasions, Sidera and affiliated companies have faced unreasonable application requirements that have often changed without explanation or notice; been presented with unreasonably high make-ready cost estimates or bills; and experienced unreasonable delays, sometimes stretching into years. These have occurred both in cases where the poles are owned by a single entity and where the poles are jointly owned. These are but a few examples of the barriers that Sidera has faced:

- In Maryland, a utility received Sidera's completed pole attachment application in February 2009 and informed Sidera that the applicable engineering requirements had changed -- but only after the fact. The utility imposed engineering standards for attaching fiber to poles (e.g., sag specifications) that were in excess of industry standards. The utility did not notify Sidera in advance of the unusual requirements, nor did the utility ultimately communicate all of the factors used to calculate the requirements for specific poles. As a consequence, the initial field engineering performed by Sidera was rendered useless, and Sidera incurred significant additional expense, including fees for the time of the pole owners' engineers, to correct the initial field engineering. Further, as an element of the attachment rates, the utility required that a significant amount (approximately 8%) of the pole be renewed by each attacher, even if the pole had been placed within the last year and even if the pole had more than adequate clearance as measured by industry standards. The over-recovery inherent in such a rate structure was evident in the utility's make ready estimate of $590,000 for 366 poles, or more than $1,612 per pole. This estimate was at least double the industry standard rate for similar projects, and was so exorbitant that Sidera had to abandon the project. This utility has also established a policy that each new attacher must repair legacy third-party attachments on the pole, even though the new attacher is not the cost-causer of the repair;

- In Pennsylvania, another utility pole owner received a Sidera affiliate's completed pole attachment application in August 2009, and did not produce a make-ready estimate until December 2009 -- taking more than twice the 45 day time period properly allotted to return the estimate. The utility also used distribution technicians that were not qualified under the utility's own standards for third-party technicians to assess make ready costs. The utility's technicians produced a make ready estimate that was more than 25% (and $56,000) in excess of the applicant's own reasonable cost estimate, with little or no explanation for the discrepancy. The utility then established the use of non-qualified technicians to assess make ready estimates as a company practice where the company, but not a third party, produced the estimates;

- In Massachusetts, Sidera submitted an attachment application and a pole field survey payment for a jointly-owned set of poles in October 2008. The ILEC took more than six (6) months to produce a make ready estimate. Though Sidera promptly submitted a make ready payment to the ILEC, the ILEC then took over nine (9) months to perform the make ready work;

- For the same set of poles, the utility took almost seven (7) months to produce a make ready estimate after Sidera submitted its pole field survey payment. This estimate came in at more than $2,100 per pole. Despite the steep price, Sidera promptly thereafter submitted a make ready payment to the utility. The utility has yet to provide an estimated make ready completion date, and Sidera has not yet received a license more than three (3) years after the initial application, though Sidera has for its part acted promptly at every stage of the process;

- In Massachusetts, for another jointly-owned set of poles, Sidera submitted an attachment application in September 2008 that produced an ILEC make ready estimate within a reasonable period of time. The ILEC performed the make ready work within four (4) months. Sidera was subsequently able to obtain a license from the ILEC. The utility, however, took 3 ½ months to produce a make ready estimate. Though Sidera forwarded a make ready payment to the utility within three (3) days of receiving the make ready assessment in January 2009, Sidera still has not received a make ready estimated completion date or a license more than two (2) years after submitting its make ready payment to the utility and more than three (3) years after first submitting its application;

- In New Hampshire, Sidera submitted an attachment application for another jointly-owned set of poles in July 2010 that produced an ILEC make ready estimate in less than two (2) months. The ILEC, however, took four (4) months to produce a make ready estimate after receiving Sidera's make ready payment. Sidera still has not received a license from the ILEC more than eight (8) months after its application. For the same set of poles, the utility took Sidera's make ready payment in September 2010 and subsequently failed to perform the work, failed to provide a detailed cost estimate, and failed to provide a make ready completion date. To date, Sidera still has not received a make ready estimated completion date, more than eight (8) months after it submitted a make ready payment;

- In New Hampshire, Sidera submitted an attachment application and pole survey payment for another jointly-owned set of poles in June 2010 that produced an ILEC make ready estimate after six (6) months of delay. The ILEC then provided a make ready completion date of April 2011 -- ten months after the pole survey payment. For the same set of poles, the utility took Sidera's pole survey payment and took more than five (5) months to produce a make ready estimate. As of this date, the utility still has not provided a make ready estimated completion date or a license, nine (9) months after receiving a pole survey payment;

- In New Hampshire, Sidera submitted an attachment application and pole survey payment for another jointly-owned set of poles in June 2010 that produced an ILEC make ready estimate after five (5) months of delay. The ILEC still has not provided a make ready estimated completion date. For the same set of poles, the utility took Sidera's pole survey payment and took five (5) months to produce a make ready estimate As of this date, the utility still has not provided a make ready estimated completion date or a license, nine (9) months after receiving a pole survey payment.[3]

These delays and excessive charges impose genuine burdens on carriers seeking to deploy fiber and extend their broadband networks. Where Sidera experiences extended delays in estimates and completion of make ready work, and in obtaining licenses, it can neither use the requested pole attachments to string fiber nor effectively move on to other fiber buildout projects in the area. Where Sidera is required as a captive user to pay excessive fees for make ready work, capital is not freed up for more productive uses such as further fiber buildout, and Sidera is not able to pass along cost efficiencies to its customers in the form of lower rates. And where unreasonable delays and excessive costs of pole attachment create uncertainty as to the economic viability of fiber deployment, the business case for any particular project may be weakened and further broadband investment discouraged.

The Commission can and should take action to address curb abuses in the marketplace and eliminate disincentives to broadband deployment by reforming processes for pole attachments and reforming pole attachments rates to make them more uniform and equitable. The Commission's proposed "five-stage' timeline intended to govern the pole attachment process is just such an action and will serve to curb such abuses. The timeline will provide greater process certainty to pole attachers while affording pole owners sufficient time and notice at each stage to respond to attachment requests. The timeline also properly addresses multiparty coordination issues, reducing the likelihood that attachers will suffer indefinite delays because poles happen to be jointly-owned. Moreover, to the extent that reduces and equalizes pole attachment rates, carriers such as Sidera will have added incentive and ability to deploy broadband facilities.

The Commission is also correct to focus on enforcement. Attachment rules and processes will be of little practical effect if they are not supported by meaningful enforcement mechanisms. The Commission should therefore create forums to expedite resolution of pole attachment disputes. One mechanism could be modeled on the Commission's "Transition Administration" procedures, whereby a third party compiles a factual record, attempts to mediate the dispute, and forwards the

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[3] While New Hampshire and Massachusetts are states that have certified that they regulate rates, terms, and conditions for pole attachments pursuant to 47 C.F.R. § 224(c), experience in those states is nonetheless relevant to the Commission's determination whether to adopt new rules that would govern the process and rates, terms, and conditions for pole attachments in states that have not certified. Many of the issues raised in New Hampshire and Massachusetts demonstrate basic problems presented by joint ownership of poles (e.g., lack of pole owner coordination, differing pole owner processes, unclear pole owner accountability, etc.), matters that the Commission seeks to directly address in non-certifying states in this proceeding. Moreover, the Commission can provide further guidance to states that have certified by adopting rules, rates, and dispute resolution procedures in this proceeding that substantially improve and streamline access to poles, thereby offering a model for certifying states to follow in improving their own rules and regulations. The Commission can especially provide guidance on enforcement mechanisms, dispute resolution processes, and remedies for rules violations.

record to the Commission if mediation is unsuccessful. The Commission could combine these procedures with an Expedited Dispute Resolution process of its own, if and when the matter reaches the Commission. These processes should supplement the Commission's formal complaint processes.[4]

Finally, enforcement is most effective when it leads to meaningful consequences and remedies. The Commission should therefore allow for compensatory damages, in addition to other remedies, where the Commission finds a pole owner has violated the Commission's pole attachment rules.

Respectfully submitted,

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[4] Such a framework could serve as a model for dispute resolution processes in states that have certified that they regulate pole attachments.